

USA Appln. No. 09/022,336
Applicant: William E. M. Jones et al
September 27, 1999

REMARKS

The examiner has required restriction under 35 U.S.C. 121. The claims have been grouped into 4 inventions, the examiner stating that each group is distinct from the other.

Claims 1 to 6 and 31 have been withdrawn. New claims 32 to 35 have been added. Because applicants believe restriction of the remaining claims to be improper, provisional election with traverse is set forth below.

Provisional Election

Group III is provisionally elected with traverse. New claim 32 is dependant from claim 15 and thus likewise part of Group III. New claim 35 is linked to claim 15 and thus should not be subject to restriction.

Traversal

The restriction requirement relating to the claims remaining in the case is submitted to be improper as the proper test for restriction in this case has not been met.

The claims remaining are as follows:

- a) 7-14, part of Group II (claims 4 to 6 of Group II are withdrawn)
- b) 15 to 26, and new claim 32, Group III
- c) 27 to 30, and new claims 33 and 34, Group IV.

New claim 35 is similar in scope to claim 27.

These remaining claims are related as combination - subcombination inventions, i.e., combination claims 7-14 of Group II and 27-30 of Group IV include the combination of

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elements set forth in claim 15 (Group III). The two way distinctiveness test is therefore believed applicable and must be shown before restriction can be required. See MPEP 806.05(c). The burden for showing that the two part test is satisfied belongs with the examiner. Since this showing has not been made, the present restriction requirement is believed improper.

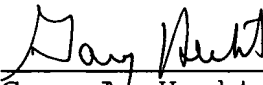
The examiner's basis for the classification of the inventions as unrelated and the application of MPEP 806.04 and 808.01 to the remaining Groups of claims is unclear since they do not apply to combination - subcombinations.

Should the examiner proceed to examine the elected claims, the remaining non-withdrawn claims should be retained in the case pending the outcome of the examination of the elected claims.

For the foregoing reasons, applicants respectfully request that the restriction requirement be withdrawn upon reconsideration.

Respectfully submitted,

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Date



Gary A. Hecht, Reg. No. 36,826
SYNNESTVEDT & LECHNER LLP
2600 Aramark Tower
1101 Market Street
Philadelphia, PA 19107-2950
Tele: (215) 923-4466
Fax: (215) 923-2189

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